Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

COMMENTS OF AT&T CORP.

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SUMMARY

In the three years since the enactment of the Telecommunications Act of 1996, state commissions have *uniformly* approved arrangements that treat voice, ISP-bound, and all other data traffic the same for reciprocal compensation purposes. Like the Commission, states also have overwhelmingly concluded that transport and termination charges should either reflect efficient forward-looking costs or, if the two carriers' traffic is roughly in balance, be settled through "bill-and-keep," arrangements. The *Declaratory Ruling*, however, creates a federal standards vacuum concerning inter-carrier compensation for ISP-bound traffic. Because ILECs can and will exploit any ambiguity to impede the development of local competition, it is critically important that the Commission act quickly to promulgate standards in this area.

Part I shows that national rules regarding inter-carrier compensation for ISP-bound traffic will serve the public interest. Such rules will counteract ILEC disincentives to negotiate voluntary interconnection agreements and provide the same substantial benefits that motivated the Commission to adopt national pricing rules for reciprocal compensation generally in the *Local Competition Order*. With regard to *application* of the national standards, AT&T supports the Commission's tentative conclusion that inter-carrier compensation should be governed prospectively by interconnection agreements negotiated and arbitrated under established state commission dispute resolution processes.

Part II demonstrates that the economically rational and pro-competitive solution to the problem of inter-carrier compensation for ISP-bound traffic is for the Commission to extend its existing reciprocal compensation pricing rules to cover ISP-bound traffic. The Commission should declare that ISP-bound traffic is subject to the existing federal standard, which, as applied by the states, permits bill-and-keep when traffic is roughly in balance, and otherwise requires efficient forward-looking cost-based pricing. This extension is a natural one that flows from recognizing that

the Commission's jurisdictional classification of some ISP-bound traffic as interstate cannot change the reality that a LEC's delivery of this traffic is physically and economically indistinguishable from the delivery of local voice traffic.

Part III shows that the Commission's rules should apply uniformly to *all* forms of ISP-bound traffic, regardless of their jurisdictional nature, because separate pricing rules for interstate and intrastate ISP bound traffic would be both unworkable and undesirable. It would be infeasible even for the ISP itself, much less a carrier, to segregate customers' Internet usage between interstate and intrastate traffic. Even if a carrier could obtain access to ISP data on the IP addresses accessed by its end users, that data would not disclose the geographic location of the particular server assigned to that address.

Part IV demonstrates that, consistent with the Commission's longstanding policy that there should be no jurisdictional mismatch between costs and revenues, the costs related to ISP-bound traffic should be assigned to the *intrastate* jurisdiction. Under no circumstances should the Commission permit incumbents to assign costs associated with *originating* ISP-bound traffic to the interstate jurisdiction such that those costs could be recovered through interstate access charges. Any jurisdictional assignment of ISP-bound traffic to the interstate jurisdiction would be flatly inconsistent with the exemption for enhanced service providers from interstate access charges, and the Commission has made clear in the *NPRM* that it does not intend to revisit the question whether the enhanced service provider exemption should be removed.

Finally, Part V shows that the Commission need not be concerned about a situation in which carriers could continue to opt into a pre-existing reciprocal compensation scheme for ISP-bound traffic via Section 252(i) "pick and choose" elections, even after the state commission or the Commission has adopted a different general rule governing ISP-bound traffic. The Commission can simply clarify in its order that its extension of its local traffic reciprocal compensation rules to ISP-bound traffic provides a basis for ILECs to break the chain of pick-and-choose elections regarding such traffic at the expiration of existing contracts. Any changes to the Commission's rules beyond this clarification would be both unnecessary and counterproductive.

For all these reasons, more fully described herein, the Commission should modify its *NPRM* proposals in accordance with these comments.

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Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") respectfully submits these comments in response to the Commission's *NPRM*[1] in this docket, regarding inter-carrier compensation for traffic delivered to Internet service providers ("ISPs").

INTRODUCTION

Local exchange carriers ("LECs") "incur a cost when delivering traffic to an ISP that originates on another LEC's network." *NPRM*, ¶ 29. There appears to be little serious dispute that, as the *NPRM* contemplates, *some* form of compensation from the carrier originating ISP-bound traffic to the carrier delivering it is therefore appropriate.

[1] Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 99-38 (Feb. 26, 1999). In these comments, AT&T will refer to the Declaratory Ruling portion of this publication as "*Declaratory Ruling*," and will refer to the Notice of Proposed Rulemaking portion as "*NPRM*."

In the three years since the Telecommunications Act of 1996 ("1996 Act")[2] removed legal impediments to competitive LEC entry, determining the appropriate compensation for such traffic has been a relatively straightforward process. State commissions nationwide have recognized that ISP-bound traffic has the same physical and cost characteristics as other voice and data traffic transported and terminated by one LEC for another, and, applying §§ 251(b)(5) and 252(d)(2) of the 1996 Act, have *uniformly* approved arrangements that treat voice, ISP-bound, and all other data traffic the same for reciprocal compensation purposes. And, although the Commission's pro-competitive reciprocal compensation pricing rules were not binding on the states throughout most of this period, the reasoning of the Commission's *Local Competition Order*[3] has proven to be powerful persuasive authority. Like the Commission, states have overwhelmingly concluded that transport and termination charges should either reflect efficient forward-looking costs or, if the two carriers' traffic is roughly in balance, be settled through "bill-and-keep" arrangements.

In the *Declaratory Ruling*, the Commission determined that ISP-bound traffic "is jurisdictionally mixed and appears to be largely interstate." *Declaratory Ruling*, ¶ 1. Although that jurisdictional finding may affect which provisions of the Communications Act will serve as bases for the future regulation of reciprocal compensation for ISP-bound traffic, it clearly "does not in itself determine what reciprocal compensation is due" for that traffic. *Id.* Rather, the upshot of the *Declaratory Ruling* is that there is now a federal standards vacuum.

If there is a single lesson to be learned from the past three years, it is that incumbent local exchange carriers ("ILECs") can and will exploit such ambiguities to protect their local monopolies

[2] Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

[3] First Report and Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) (*"Local Competition Order"*).

and to impede the development of local competition. Indeed, they have already begun to do so here by, for example, filing suits in federal court seeking declarations that the Commission's *Declaratory Ruling* entitles them to withhold compensation for ISP-bound traffic, and thus to gain a free ride on their emerging competitors' networks.[4]

Accordingly, it is critically important that the Commission act quickly to fill the existing federal standards vacuum. AT&T strongly urges the Commission to do so by requiring that its recently reinstated pricing rules governing reciprocal compensation for local traffic be applied on a uniform basis to both voice and ISP-bound traffic. Specifically, the Commission should declare that inter-carrier compensation for *all* ISP-bound traffic, regardless of its jurisdictional nature, is subject to the existing federal standard which, as applied by the states, permits bill-and-keep (on a uniform basis for voice and ISP-bound traffic) when traffic is roughly in balance, and otherwise requires efficient forward-looking cost-based pricing (on a uniform basis for voice and ISP-bound traffic). This extension is a natural one that flows from recognizing that the Commission's jurisdictional classification of some ISP-bound traffic as interstate cannot change the reality that a LEC's delivery of this traffic is physically and economically indistinguishable from the delivery of voice traffic.

AT&T's proposal is fully consistent with the Communications Act requirements of "just and reasonable" rates and practices, the pro-competitive goals of the 1996 Act, and the same fundamental economic principles that led the Commission to adopt its reciprocal compensation rules in the first instance. Further, clarifying that the same federal rules will apply on a uniform basis to all traffic for transport and termination purposes, and that those rules will be administered through established state commission interconnection agreement dispute resolution processes, is the only approach that is fully

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[4] *See, e.g.*, Complaint, *Bell Atlantic-Virginia, Inc.* v. *WorldCom Technologies of Virginia, Inc.*, No. 99-275-A (E.D. Va. Mar. 12, 1999); Ameritech Wisconsin Supplemental Response Brief at 2-17, *Wisconsin Bell Inc.* v. *TCG Milwaukee, Inc.*, No. 98 C 0366C (W.D. Wisc. Apr. 1, 1999).

consistent with the important goals of minimizing entry barriers, easing administrative burdens, and minimizing opportunities for arbitrage and "gaming" the system. As detailed below, the impracticalities (and, in some cases, impossibilities) associated with distinguishing ISP-bound calls from other calls and *intra*state ISP-bound calls (or portions of calls) from *inter*state ISP-bound calls starkly confirm that any proposal that contemplates separate rules (or no rules) is a recipe for chaos and for the construction of additional entry barriers that can only favor ILECs at the expense of the Commission's core pro-competition goals.

Of course, these proposals represent only the best *short-term* solution to the problem of inter-carrier compensation for ISP-bound traffic. AT&T remains convinced that, in the long term, artificial regulatory distinctions between types of traffic or classes of carriers must yield to a market-based structure in which *all* users of networks pay the economic cost of their use, with no hidden subsidies.

ARGUMENT

I. THE COMMISSION SHOULD PROMULGATE NATIONAL RULES TO BE APPLIED BY THE STATES IN DETERMINING APPROPRIATE RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC.

The Commission's tentative conclusion that national rules "regarding [prospective] inter-carrier compensation for ISP-bound traffic . . . would serve the public interest," *NPRM*, ¶ 28, is unquestionably correct. The very same rationales that motivated the Commission to adopt national pricing rules for reciprocal compensation in the *Local Competition Order* apply with equal, if not greater, force here. The *NPRM*, however, places undue emphasis on the ability of negotiations, standing alone, to establish the reciprocal compensation terms of interconnection agreements. *See NPRM*, ¶ 28 (rules "should strongly reflect [the Commission's] judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts").

Reciprocal compensation arrangements cannot be considered in isolation. Whatever incentives an ILEC might otherwise have to negotiate reasonable reciprocal compensation provisions (because payments, at least in theory, could flow either way) are overwhelmed by the ILEC's powerful incentives to do whatever it takes to deny potential competitors interconnection on commercially reasonable terms.[5] No speculation is required to conclude that ILEC incentives to sabotage the interconnection agreement process by foot dragging and insisting on anticompetitive terms are as strong in the context of compensation for ISP-bound traffic as they are elsewhere. Indeed, recent history teaches that compensation for ISP-bound traffic is among the issues that are *most* hotly contested and *least* likely to be resolved through voluntary negotiation.[6] Accordingly, the "inequality of bargaining power between incumbents and new entrants militates in favor of [strong national] rules that have the effect of equalizing bargaining power," *id.* ¶ 55, not weak or amorphous rules that rely heavily on the success of negotiations.

Strong national rules here promise the same benefits the Commission identified in the *Local Competition Order*. Such rules will significantly reduce the transaction and litigation costs of entry, *id.* ¶¶ 56, 61, 179; enhance the ability of carriers to adopt region-wide or national entry strategies,

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[5] New entrants "seek to reduce the incumbent's subscribership and weaken the incumbent's dominant position in the market," *Local Competition Order*, ¶ 141, and "incumbent LECs [therefore] have *no* economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services." *Id.* ¶ 55 (emphasis added). On the other hand, new entrants must enter into interconnection agreements because they need access to the ILECs' networks in order to compete. Due to this "inequality of bargaining power," "[n]egotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires." *Local Competition Order,* ¶ 55. Accordingly, "there is 'no basis in economic theory or in experience to expect incumbent monopolists to quickly negotiate arrangements to facilitate disciplining entry by would-be competitors, absent clear legal requirements to do so.'" *Id.* ¶ 241 (quoting Department of Justice Comments).

[6] *See, e.g.*, Letter from Richard J. Metzger, General Counsel for ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC at 1-2 (June 20, 1997) (cited in footnote 1 of the *NPRM*).

id. ¶¶ 56, 61; facilitate entry by providing carriers and financial markets with greater outcome predictability, *id.* ¶¶ 56, 242; simplify the dispute-resolution process by providing clear standards for arbitrators to follow, and by limiting the number of issues that arbitrators must consider, *id.*; and "enable the Commission to address issues swiftly if the Commission is obligated to assume section 252 responsibilities because a state commission has failed to act." *Id.* ¶ 57.[7]

With regard to *application* of the national standards, AT&T supports the Commission's tentative conclusion that "the inter-carrier compensation for . . . interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under section 251 and 252 of the Act." *NPRM*, ¶ 30. The compensation rate for ISP-bound traffic is but one of the many interconnection issues that must be resolved before new entrants can begin to compete, and there is no reason to treat it any differently than other interconnection issues governed by federal standards, such as compensation rates for interconnection, network elements, resale, and transport and termination of local traffic. Indeed, resolving this issue in the context of established state commission dispute resolution processes will "help facilitate the [Commission's] policy goals . . . by forcing the parties to hold a *single* set of negotiations regarding rates, terms, and conditions for interconnected traffic and to submit all disputes regarding interconnected traffic to a *single* arbitrator." *NPRM*, ¶ 30 (emphasis added).

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[7] The Commission need not be concerned that national rules will impair its desire to foster compensation arrangements that "vary depending on the underlying commercial relationships with the end user." *NPRM*, ¶ 29. "[A] uniform rule does not necessarily mean uniform results. For example, a national pricing methodology takes into account local factors and inputs [*i.e.*, factors that are particular to the state or arrangement at issue], and thus may lead to different prices in different states, and different regions within states. In addition, parties that voluntarily negotiate agreements need not comply with the requirements" adopted by the Commission. *Local Competition Order*, ¶ 54. Thus, "[v]ariations . . .will exist, because parties may negotiate their own terms, states may impose additional requirements that differ from state to state, and some terms [will be] beyond the scope" of the Commission's rules. *Id.* ¶ 60.

If the Commission were to conduct separate proceedings limited to ISP-bound traffic, the carriers (and the Commission) would needlessly be forced to expend significant resources to pursue a parallel track of arbitrations and appeals for each state. A duplicative set of arbitrations could only increase the transaction and litigation costs of entry, and thus undermine the Commission's goal of introducing local competition as quickly as possible. Thus, in order to foster resolution of interconnection issues in a single set of negotiations, minimize the transaction and litigation costs of entry, and ensure consistency of results, the Commission should allow state commissions to apply the federal pricing standards in the context of their existing interconnection agreement dispute resolution processes.[8]

For these same reasons, the Commission should *not* appoint itself the default arbiter of disputes over reciprocal compensation for ISP-bound traffic (absent a state commission's "fail[ure] to act," 47 U.S.C. § 252(e)(5)). Were the Commission to do so, however, it is clear that the Commission would have no "authority to establish an arbitration process that is final and binding and not subject to judicial review." *NPRM*, ¶ 32. Section 208 of the Communications Act gives entities the statutory right to seek enforcement of any Commission rule, either from the Commission or a federal district court. 47 U.S.C. § 208. To the extent the Commission issues any order in such a proceeding, the order is reviewable in the U.S. Courts of Appeals. 47 U.S.C. § 402. Although the

[8] Allowing state commissions to apply the Commission's new federal standards for inter-carrier compensation counsels more, not less, specificity and clarity in those standards. As the Commission has recognized with respect to inter-carrier compensation generally, "the price levels set by state commissions will determine whether the 1996 Act is implemented in a manner that is pro-competitor and favors one party . . . or, as [the Commission] believe[s] Congress intended, pro-competition." *Local Competition Order* ¶ 618. It therefore is "critical to implementing Congress's pro-competitive, de-regulatory national policy framework to establish among the states a common, pro-competition understanding of the pricing standards." *Id.* "While such a common interpretation might eventually emerge through judicial review of state arbitration decisions, . . . such a process could delay competition for years and require carriers to incur substantial legal costs." *Id.*

Commission may choose to delegate some of its powers to inferior bodies, perhaps including private arbitrators, the Commission may not use this delegatory power to deprive parties of their statutory rights to judicial review.[9]

II. THE COMMISSION SHOULD REQUIRE THAT INTER-CARRIER COMPENSATION FOR ISP-BOUND TRAFFIC BE ESTABLISHED UNDER ITS EXISTING RECIPROCAL COMPENSATION PRICING RULES AND APPLIED ON A UNIFORM BASIS WITH THE COMPENSATION SCHEME APPLICABLE TO VOICE TRAFFIC.

The economically rational and pro-competitive solution to the problem of inter-carrier compensation for ISP-bound traffic is for the Commission to extend its existing reciprocal compensation pricing rules to cover ISP-bound traffic and to require that those rules be applied uniformly to voice and ISP-bound traffic. The Commission's now-reinstated pricing rules governing inter-carrier compensation obligations for the transport and termination of local traffic provide a fundamentally correct framework for deriving rates for the termination of ISP-bound traffic -- and,

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[9] This conclusion is confirmed by the provisions of the Administrative Dispute Resolution Act, Pub. L. No. 101-552, 104 Stat. 2738, *codified at* 5 U.S.C. § 571 *et seq.* ("ADRA"), to which the *NPRM* refers. *See NPRM,* ¶ 32 & n.91. The ADRA permits administrative agencies to refer disputes to private arbitrators for resolution, but *only* when all the parties expressly agree to use that alternative dispute resolution mechanism. 5 U.S.C. § 575(a) ("Arbitration may be used as an alternative means of dispute resolution *whenever all parties consent.*") (emphasis added). Even then, the ADRA allows consenting parties to seek limited judicial review. 5 U.S.C. § 581. In addition, the Commission already has held that parties should be subject to alternate dispute resolution mechanisms only when the parties have consented to their use, and when the use of such mechanisms is consistent with the Commission's statutory mandate. *See* Initial Policy Statement and Order, *In re Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in Which the Commission Is a Party*, 6 FCC Rcd. 5669, ¶¶ 2, 9 (1991) (noting that the ADRA authorizes only "*consensual* methods of dispute resolution" and holding that "the Commission will make every effort possible to resolve appropriate disputes through mediation, arbitration, settlement negotiation, negotiated rulemaking and other means of dispute resolution w[*h*]*ere the parties involved consent to their use and* w[*h*]*ere such practice is consistent with our statutory mandate*") (emphasis added).

indeed, reflect the longstanding industry practice with respect to inter-carrier compensation for such traffic.[10]

The Commission's existing rules authorize state commissions to "impose bill-and-keep arrangements" if the amount of traffic flowing in one direction "is roughly balanced" with the amount of traffic flowing in the opposite direction, "and is expected to remain so." 47 C.F.R. §§ 51.705(a), 51.713(b). Where traffic is not "roughly balanced," the Commission's rules require states to establish rates on the basis of "the forward-looking economic costs" of delivering the traffic. 47 C.F.R. § 51.705(a)(1). Concluding that "[s]ymmetrical compensation rates are [] administratively easier to derive and manage than asymmetrical rates based on the costs of each of the respective carriers," the Commission's rules require "reciprocal compensation" to "be based on the incumbent local exchange carrier's cost studies," unless the competitive local exchange carrier ("CLEC") demonstrates that its costs of termination justify imposing *higher* rates than those charged by the ILEC. *Local Competition Order,* ¶¶ 1088-89 (emphasis added); 47 C.F.R. § 51.711(b) (state commission may establish asymmetrical rates "only if" the entrant's costs are proven to be higher than the incumbent's costs). Finally, the Commission's rules require that rate structures reflect "the manner that carriers incur those costs." 47 C.F.R. § 51.709.

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[10] Letter from Richard J. Metzger, General Counsel for ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC at 1-2 (June 20, 1997); Order at 26, *In re Emergency Petitions of ICG Telecom Group Inc. and ITC Deltacom Communications, Inc. for a Declaratory Ruling,* No. 26619 (Ala. P.S.C. Mar. 4, 1999) ("We again emphasize that the prevailingly local treatments of ISP traffic detailed above were also in place at the time the interconnection agreements under review herein were entered. We thus concluded that the industry customer and usage at that time dictated that ISP traffic be treated as local and, therefore, subject to reciprocal compensation. We find that the treatment of ISP traffic as local was in fact so prevalent in the industry at [the time interconnection agreements were entered into] that BellSouth, if it so intended, had an obligation to negate such local treatment in the interconnection agreements it entered by specifically delineating that ISP traffic was not to be treated as local traffic subject to the payment of reciprocal compensation."); Bell Atlantic Reply Comments, First Report and Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (May 30, 1996)

There is no justification for subjecting ISP-bound traffic to a different compensation methodology than other traffic exchanged between LECs. To begin with, any compensation scheme that required carriers separately to identify, measure, and bill for ISP-bound traffic would be unjustifiably costly and time-consuming. Neither the ILECs' nor the CLECs' switches or other equipment have been designed to distinguish between analog circuit-switched "data" traffic and analog circuit-switched "voice" traffic. From the perspective of a carrier's equipment, data and voice traffic handled by conventional circuit-switched networks are indistinguishable. Moreover, neither ILECs nor CLECs generally impose usage restrictions on their customers that would enable them to assure that certain numbers are used only for certain types of traffic. For these reasons, requiring carriers to settle ISP-bound traffic at different rates than voice traffic would impose significant development and deployment costs on terminating carriers at a time when both CLECs and ILECs should be focusing their resources on providing service to end-users, not on implementation of needless billing programs.

More fundamentally, there is no economic justification for subjecting voice and data traffic to different compensation rules. Consistent with its conclusions in the *Local Competition Order*, the Commission properly recognizes in its *NPRM* that inter-carrier compensation rates for ISP-bound traffic should be based on the "cost" that "LECs incur . . . when delivering traffic to an ISP that originates on another LEC's network." *NPRM*, ¶ 29. Indeed, only a methodology that focuses on the costs of delivery will produce the "efficient" rates that the Commission has set as a goal. *NPRM*, ¶ 29 (concluding that "efficient rates" must "reflect accurately how costs are incurred for delivering ISP-bound traffic"). Despite their repeated complaints about their payment obligations to CLECs for the termination of ISP-bound traffic, however, the simple fact is that the ILECs have not demonstrated, and cannot demonstrate, that the costs of transporting and terminating data traffic differ categorically from the costs of transporting and terminating ordinary voice traffic.

Carriers, including CLECs, utilize the same equipment and facilities to terminate ISP-bound traffic as they do for conventional voice traffic bound for other business users with large volumes of inbound traffic. In its *NPRM*, the Commission correctly describes the typical network architecture employed in the termination of an ISP-bound call that originates on another LEC's network. Such calls are carried "(1) by the originating LEC from the end user to the point of interconnection (POI) with the LEC serving the ISP; [and] (2) by the LEC serving the ISP from the LEC-LEC POI to the ISP's local server" over the CLEC's transport, switching, and termination equipment and facilities. *NPRM*, ¶ 7. Voice traffic destined to large business end users such as credit card-issuing banks, travel agents, and PBX users are typically terminated in precisely the same way, and utilizing precisely the same types of equipment.[11] The costs associated with terminating ISP-bound traffic therefore should be substantially identical to the costs associated with terminating voice traffic to such customers. The ILECs' efforts, in the face of these facts, to advocate different compensation rates for voice and data traffic are baseless and should be rejected.

Nor can ILECs justify a different compensation scheme based on their own allegedly higher costs of *originating* ISP-bound traffic. For example, ILECs complain about the costs they incur in aggregating ISP-bound traffic, and suggest that the flat rates that they typically charge end users are inadequate because the ISP-bound calls originated by the ILECs' end users allegedly have higher than average holding times. *See, e.g.*, U S WEST's Opening Comments at 17, *Investigation of Internet*

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[11] *Cf. Local Competition Order*, ¶ 1033 ("We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions" and that therefore "the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge.").

Serve Providers Traffic, No. C-1960/PJ-25 (Neb. PSC, Mar. 15, 1999) (arguing that customers with abnormally high levels of "ISP-type" usage are "liabilities" rather than "assets" to the originating carrier). These concerns, however, are irrelevant in determining appropriate compensation for costs associated with the *delivery* of ISP-bound traffic. As established above, the only relevant factor under both the *NPRM* and the *Local Competition Order* -- as well as sound principles of economics -- is the cost that the *terminating* carrier incurs in delivering the ISP-bound traffic. If a LEC believes that its retail rates are improperly structured to reflect its costs of originating calls, the LEC should seek permission to modify those rates. The solution does not lie in arbitrarily under-compensating other carriers for costs associated with delivering one category of traffic.[12]

For the same reason, Ameritech's proposal that the terminating carrier should be compensated on the basis of a share of Ameritech's *revenues* generating these calls lacks any economic basis. *NPRM*, ¶ 33. It is worth noting, however, that the ILECs generate a tremendous share of their profits from sales of the additional lines that their customers use to initiate ISP-bound calls. Indeed, growth in Internet traffic has also increased the ILECs' customers' demand for more expensive advanced data services, like ISDN or ADSL, and for DS1 and DS3 services. As a result, ILEC revenues from data services are growing at 35% to 45% per year -- a growth the industry attributes largely to the growth of the Internet. The ILECs seek to have it both ways, complaining about the costs they incur in originating ISP-bound traffic while ignoring the high profits they earn as a result of that traffic.

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[12] Although the ILECs repeatedly complain that their end user rates are set too low to recover costs for customers with above-average internet usage, the ILECs simply ignore that where states have established uniform flat rates for local exchange service, those rates are necessarily based on the costs of serving a customer with *average* cost characteristics. By definition, an average rate will undercompensate carriers for service to above-cost customers, and overcompensate carriers for lower-cost customers.

The ILECs' remaining arguments for distinguishing between ISP and voice traffic are equally insubstantial. For example, ILECs claim that "convergent" ISP traffic can be less costly to terminate than voice traffic, especially where trunk port connectivity is deployed (thereby reducing switch congestion). But ISP traffic is not unique in this regard. Numerous large business end users, such as banks, travel agents, and large PBX users, exhibit similar calling patterns. These calling patterns simply have nothing to do with whether the calls in question involve data or voice communication.

Similarly, the Commission's observation that "efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures" and that "flat-rated pricing based on capacity may be more cost-based" for at least some components of service also provides no reason to allow disparate treatment of voice and data traffic. In the *Local Competition Order*, the Commission recognized that "economic efficiency may generally be maximized when non-traffic sensitive services, such as the use of dedicated facilities for the transport of traffic, are priced on a flat-rated basis." *Local Competition Order*, ¶ 1063. Consistent with those findings, the Commission's existing reciprocal compensation pricing rules generally require that the rate structures adopted by the state commissions reflect the manner in which costs are incurred. 47 C.F.R. § 51.709. Thus, debates about flat-rated or usage-sensitive pricing merely confirm the flexibility of the Commission's existing pricing rules for transport and termination of local traffic and the propriety of extending those rules to interstate ISP-bound traffic as well.

To the extent that ILECs have even attempted to demonstrate that carriers incur different costs *delivering* ISP and voice traffic, the ILECs' analyses have depended on the assumption that CLECs are providing exclusively or predominantly terminating service to ISP customers, and are not carrying both voice and data traffic among a broad array of customers. For example, in a recent affidavit filed in Massachusetts in the wake of the Commission's *NPRM*, Bell Atlantic's affiant could state only that "CLECs that terminate *virtually all* traffic as ISP-bound calls . . . do not require the normal complement of line and trunk modules that are used in LEC *or CLEC networks* to provide dial tone and ringing to end users lines that make and receive calls." Affidavit of Lawrence J. Chu at ¶ 4, *Complaint of WorldCom Technologies, Inc. against New England Tel. & Tel. Co.*, No. 97-116-B (Mass. Dep't of Telecomm. & Energy, Mar. 29, 1999) (emphasis added). Indeed, Bell Atlantic's witness conceded that "there are also CLECs that do provide some local exchange service with originating and terminating calls as well as serving ISPs," and those CLECs "typically . . . equip their switches with the same end user software that is resident in ILEC switches." *Id.* ¶ 5. Thus, the ILECs themselves have not been able to establish cost differences between ISP and voice termination that would apply to broad-based CLECs.

Even if the ILECs could substantiate their assertions of cost differences with respect to a subset of niche entrants who have focused their marketing efforts exclusively on ISPs, it would plainly be improper for the Commission to base its general rule on the exceptional case. As the Commission has already held in the *Declaratory Ruling* that accompanied the *NPRM*, "the state commissions are capable of assessing whether and to what extent these and other anomalous practices are inconsistent with the statutory scheme (*e.g.*, definition of a carrier) and thereby outside the scope of any determination regarding inter-carrier compensation." *Declaratory Ruling* at ¶ 24 n.78. Thus, there is neither need nor justification for the Commission to adopt a pricing rule that would apply broadly to the *delivery* of all ISP-bound traffic to deal with "anomalous practices." *See also id.* ¶ 24 ("we note that issues regarding whether an entity is properly certified as a LEC if it serves only or predominantly ISPs are matters of state jurisdiction").

ILEC complaints about the apparent practice of some in the industry of sharing reciprocal compensation revenue with ISP customers further confirm the need for extension of the existing federal rules to ISP-bound traffic. To the extent that the Commission believes this practice unreasonable, the existing pricing rules, which require that rates for transport and termination be based on forward-looking costs, should discourage it.[13] Similarly, a rule requiring settlement of ISP-bound traffic on a uniform basis together with local voice traffic will *reduce* arbitrage and gamesmanship in the area of inter-carrier compensation. For example, as Bell Atlantic so forcefully argued in its comments in the *Local Competition Order* proceedings, the fact that an ILEC's competitors may be more successful in marketing to customers with high volumes of inbound traffic -- such as ISPs -- provides a powerful incentive for the ILEC to support reciprocal compensation prices that are truly cost-based.[14] If ILECs were successful in their attempts to carve ISP-bound calling out of the inter-carrier compensation system for local traffic, however, they would have successfully won a "free ride" on the networks of their competitors for completion of calls placed by ILEC residential customers to ISPs, and would then have every incentive to keep reciprocal compensation rates applicable to the remaining traffic as high as possible.

Moreover, ILEC complaints about revenue sharing between CLECs and their ISP customers are sheer hypocrisy. Whatever the prevalence of such practices, they pale in comparison to the abuses engendered by the ILECs' bloated access charges. As the Commission is aware, numerous purported

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[13] Moreover, to the extent that reciprocal compensation rates are currently above cost, it is worth noting both that the rates in question were often proposed by the ILECs' themselves and that the decisions of the Eighth Circuit staying and vacating -- at the ILECs' urging -- the Commission's efficient pricing rules removed an important constraint on excessive rates.

[14] *See, e.g.*, Bell Atlantic Reply Comments at 21, First Report and Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (May 30, 1996) ("the notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominately inbound such as credit card authorization centers and internet access providers").

CAPs around the country have taken advantage of the ILECs' inflated terminating access charges to engage in revenue sharing arrangements with chat line providers and other users with high terminating usage.[15] Yet, despite the prevalence of these abuses -- not to mention the enormous consumer welfare losses engendered by access charges that exceed costs by billions of dollars -- the ILECs have vigorously opposed any effort to reduce their access charges to the cost-based rates that would discourage such arrangements.

Finally, although the *NPRM* suggests that the Commission may consider specific substantive pricing rules in this proceeding that go beyond the establishment of a TELRIC methodology, there is no need here for the Commission to address particular applications of that methodology to ISP-bound traffic. Where the uniform pricing arrangement applicable to voice and ISP-bound traffic that the state commission has adopted is not bill-and-keep, existing per-minute or flat-rated, capacity-based pricing structures based on TELRIC, as already required by existing Commission rules for local traffic, should continue to be appropriate. However, the Commission should reject ILEC proposals to move toward compensation (for ISP-bound traffic alone or for voice and ISP-bound traffic together) based on per-call set-up charges with little or no per-minute charges. Such proposals have not been shown to reflect the terminating carrier's costs as appropriately as per-minute or flat-rated, capacity-based pricing structures based on TELRIC, and are nothing more than a thinly veiled strategy on the part of ILECs to use the reciprocal compensation system to disadvantage their competitors by placing disproportionate charges on carriers that tend to have higher-duration inbound calls.

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[15] *See* Answer and Cross Complaint of AT&T Corp., *Total Telecommunications Services, Inc.* v. *AT&T Corp.*, No. E-99-03 (FCC Dec. 24, 1996).

In short, because there is no rational economic basis for subjecting voice and data traffic to different compensation regimes, the Commission should order that ISP-bound traffic be settled on the same basis as voice traffic, and pursuant to the Commission's existing reciprocal compensation pricing rules.

III. THE COMMISSION'S PRICING RULES SHOULD GOVERN BOTH INTERSTATE AND INTRASTATE ISP-BOUND TRAFFIC.

The Commission "seek[s] comment on whether [it] should adopt rules for the interstate traffic that would coexist with state rules governing the intrastate traffic, or whether it is too difficult or inefficient to separate intrastate ISP-bound traffic from interstate ISP-bound traffic." *NPRM*, ¶ 36. The short answer is that the Commission's rules should apply uniformly to *all* forms of ISP-bound traffic -- intrastate and interstate. Separate pricing rules for interstate and intrastate ISP bound traffic would be both unworkable and undesirable.

In the *Declaratory Ruling*, the Commission concluded that whether an ISP-bound call is interstate or intrastate in nature is determined by examining the geographic location of the end user and of the server that hosts the web site that the end user has accessed. *Declaratory Ruling*, ¶¶ 12, 18. Under that analysis, a user's Internet session would typically include both interstate *and* intrastate traffic. At a minimum, therefore, a carrier would have to compile detailed records of the ISP's customer's usage in order to separate interstate from intrastate traffic.

As the accompanying affidavit of John D. Friedmann, Division Manager, AT&T WorldNet Service ("Friedmann Aff.," attached hereto as Exhibit A), attests, it is technically infeasible even for the ISP itself to segregate its customers' Internet usage between interstate and intrastate traffic. Unlike traditional calls that can be relatively easily identified as either interstate or intrastate, the *NPRM* would require that each individual completed connection between an end user and an ISP be further separated between the federal and state jurisdiction based on the web site servers that the end user accesses within each session. It would be prohibitively costly and impractical for an ISP to store records of the thousands or millions of URL addresses that its customers request on a monthly basis. Friedmann Aff. ¶ 5. Such records are not currently kept by ISPs, and requiring ISPs to do so would have the foreseeable effect of increasing the rates consumers will have to pay for using the Internet.[16]

More fundamentally, even if a carrier could obtain access to its ISP customer's data on the IP addresses accessed by each of the ISP's own end user customers on each call, that data would not disclose *the geographic location* of the particular server assigned to that address. *Id.* ¶ 8. Although the entity that allocates domain names may have publicly available information as to the identity of the owner of each domain-level address, the identity (or even the main business address) of the domain owner would not identify the geographic location of the particular server that it is using to host the web site.

Indeed, the interstate or intrastate nature of the traffic could, under the Commission's analysis, change on a day to day (or even call by call or download by download) basis depending on the ISP's caching protocols. *Id.* ¶ 9. An ISP typically employs dynamic caching software that caches sites at various levels within the ISP's hierarchical network depending on such factors as the popularity of the site among users in a particular section of the country at a particular point in time. A site located on a server across state lines one moment may be resident on a server within the local exchange moments later. Again, even a list of IP addresses accessed by each end user would be of no value in determining the geographic locations of the sites when they were accessed.[17]

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[16] It is far from clear that the Commission even has jurisdiction over ISPs (at least those that provide no telecommunications services and that are unaffiliated with a carrier) that would allow the Commission to require these ISPs to turn over any usage records that would be necessary to separate traffic on an interstate-intrastate basis.

[17] A separate pricing rule for interstate and intrastate traffic, in addition to being costly to administer,
(continued...)

For all of these reasons, the Commission should promulgate pricing rules that apply to both interstate and intrastate ISP-bound traffic alike.

IV. THE COSTS RELATED TO ISP-BOUND TRAFFIC SHOULD BE ASSIGNED TO THE INTRASTATE JURISDICTION.

Consistent with the Commission's longstanding policy that there should be no jurisdictional mismatch between costs and revenues, *see NPRM* ¶ 36, the costs related to ISP-bound traffic should be assigned to the *intrastate* jurisdiction. Under AT&T's proposal, inter-carrier compensation for the delivery of ISP-bound traffic would either take the form of bill-and-keep (in which case each carrier would recover costs from its own intrastate ratepayers) or state-determined cost-based compensation rates (in which case intrastate treatment would be necessary to ensure that the same jurisdiction determined both costs and rates).

Under no circumstances should the Commission permit incumbents to assign costs associated with *originating* ISP-bound traffic to the interstate jurisdiction such that those costs could be recovered through interstate access charges, as SBC has recently informed the Commission that it intends to do. *See* Letter of B. Jeannie Fry, SBC, to Ken Moran, FCC) (Jan. 20, 1998); Letter of B. Jeannie Fry, SBC, to Ken Moran, FCC (Feb. 23, 1998).[18] Any jurisdictional assignment of ISP-bound traffic to the interstate jurisdiction would be flatly inconsistent with the exemption for enhanced service providers ("ESPs") from interstate access charges, and the Commission has made clear in the

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[17] (...continued)
could also create undesirable incentives. For example, rather than deciding whether to cache web sites locally based on the popularity of the site and the goal of maximizing speed of Internet access in the most efficient manner, different rates for intrastate and interstate traffic could create incentives for ISPs to cache sites based on rates.

[18] Ameritech has asked for a waiver to raise its interstate price caps to recover its reciprocal compensation expenses through interstate access charges. *Petition of Ameritech for Expedited Interim Waiver Concerning Treatment of Inter-carrier Compensation Payments for Interstate ISP-bound Traffic*, DA 99-674 (Apr. 2, 1999).

NPRM that it does not intend to revisit the question whether the ESP exemption should be removed. *NPRM* ¶ 34; *see also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Notice of Proposed Rulemaking, 4 FCC Rcd. 3983, 3987 (1989) ("ESP traffic . . . is classified as local traffic for separations purposes, with the result that [traffic-sensitive] costs associated with ESP traffic are apportioned to the intrastate jurisdiction"); First Report and Order, *Access Charge Reform, et al.*, CC Docket Nos. 96-262 *et al.*, 12 FCC Rcd. 15982, ¶ 346 (1997) ("[t]o the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators").

Moreover, such an assignment would have other distorting effects. Most notably, erroneous assignment of these costs to the interstate jurisdiction would artificially lower the incumbent's reported interstate rate of return, prompting claims that the low-end adjustment is triggered, and thereby leading to an unwarranted increase in access charges above their already grossly inflated levels. This is no idle concern. SBC has previously indicated that, based on 1997 data, treating ISP-related minutes as interstate would add $29.2 million to its interstate costs. For these reasons, the Commission should make clear that any such separations treatment of ISP-bound traffic is a violation of the Commission's rules. *See also* Letter of Mary L. Brown, MCI, to Lawrence E. Strickling, FCC (Feb. 17, 1999) (opposing SBC proposal).

V. THE FCC SHOULD NOT ENGAGE IN A WHOLESALE REVISION OF ITS EXISTING PICK AND CHOOSE RULES.

Finally, the Commission seeks comment on how Section 252(i) and the "most favored nation" clauses contained in many interconnection agreements might affect the ability of parties to renegotiate the terms of interconnection agreements. *NPRM*, ¶ 35. The Commission appears to be concerned about a situation in which carriers could continue to opt into a pre-existing reciprocal compensation scheme for ISP-bound traffic via Section 252(i) elections, even after the state commission or the Commission has adopted a different general rule governing ISP-bound traffic.

As an initial matter, it is ironic that the ILECs have raised a concern over speculative future CLEC "pick and choose" abuses given the ILECs' own actual and continuing "pick and choose" abuses in uniformly and lawlessly denying CLEC requests to exercise their statutory and contractual "pick and choose" rights.[19] In any event, the perceived problem is easily addressed. The Commission can simply clarify in its order that its extension of its local traffic reciprocal compensation rules to ISP-bound traffic provides a basis for ILECs to break the chain of pick-and-choose elections regarding such traffic after existing agreements expire.

Any changes to the Commission's rules beyond this clarification would be both unnecessary and counterproductive. LECs' rights under both Section 252(i) and the Commission's rule implementing that section (the so-called "pick-and-choose" rule) extend well beyond the narrow context of reciprocal compensation for ISP-bound traffic, and therefore the Commission should take care not to distort the generally applicable rules in response to perceived concerns specific to this proceeding. As the Commission noted in the *Local Competition Order*, the pick-and choose requirement is "a primary tool of the 1996 Act for preventing discrimination." *Local Competition Order*, ¶ 1296. Consequently, the Commission found that uniform national rules are "central to the statutory scheme and to the emergence of competition." *Id.* ¶ 1309.

The Commission should thus reaffirm that its existing Rule 809(b) sets forth the circumstances under which an ILEC can refuse to honor a pick-and-choose election – *i.e.*, technical infeasibility or

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[19] *See, e.g.*, Letter from Amy D. Kanengizar, Bell Atlantic, to Mart Vaarsi, AT&T (Apr. 7, 1999) (refusing to allow AT&T to exercise its rights under Section 252(i) of the 1996 Act until "the Eighth Circuit Court of Appeals has issued its mandate in respect of the U.S. Supreme Court's January 1999 decision in *Iowa Utils. Bd. v. FCC*") (attached hereto as Exhibit B).

legitimate cost differences. Moreover, the Commission should reaffirm that it is the ILEC that bears the burden of proving that these circumstances exist. *Local Competition Order,* ¶ 1317 ("where an incumbent LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state commission that that differential treatment is justified based on the cost to the LEC of providing that element to the carrier"). If an ILEC cannot make such a showing, then a CLEC should be able to opt into any provision of an interconnection agreement for the same full term as the original CLEC.

It is critically important that the Commission adhere to clear, bright-line rules affording requesting CLECs broad rights to obtain interconnection, services, and network elements pursuant to Section 252(i). CLECs today are making substantial investments in the provision of local service, and stability and predictability in that business environment (including the terms and conditions under which those investments may be deployed) is essential. Without easily enforceable bright-line rules, ILECs will have endless opportunities to frustrate CLECs' attempts to obtain the agreements they need, knowing that CLECs are faced with the Hobson's choice of knuckling under to the ILECs' demands and getting into the market as quickly as possible, or insisting on their rights at the cost of considerable delay in market entry. For example, Bell Atlantic has repeatedly sought to thwart attempts by CLECs to exercise their Section 252(i) rights by insisting on regulatory "clarifications" of provisions in existing agreements (including "clarifications" contrary to previously arbitrated results) before allowing a CLEC to opt in. For these reasons, the Commission should not amend or weaken the general "pick and choose" rule in response to any narrow concerns in the context of ISP-bound traffic.

CONCLUSION

For the reasons stated above, the Commission should modify its proposals in the *NPRM* in accordance with AT&T's comments.

Respectfully submitted,

AT&T Corp.

By /s/ Mark C. Rosenblum

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April 12, 1999

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

DECLARATION OF JOHN D. FRIEDMANN

I, John D. Friedmann, declare as follows:

1. I am employed by AT&T Corp. ("AT&T") as a Division Manager, AT&T WorldNet Service ("AT&T WorldNet'). I have held this position since January, 1997. The purpose of this declaration is to respond to the Commission's question in its Notice of Proposed Rulemaking whether "it is to difficult or inefficient to separate intrastate ISP-bound traffic from interstate ISP-bound traffic." ¶ 36.

2. AT&T WorldNet is an Internet service provider ("ISP") that provides both business customers and consumers access to the Internet, as well as access to content assembled by AT&T WorldNet. In my role as Division Manager, I am responsible for Worldnet Network Product Management and Data Warehousing. I am therefore personally familiar with subscribers' use of the Internet and the ability of ISPs to track such usage.

3. I understand that the Commission has ruled that whether a particular internet communication is interstate or intrastate is determined by examining the geographic location from which the communication is initiated and the geographic location of the

server or servers accessed during the Internet session. Based on this understanding, it would be costly, difficult and impracticable to separate intrastate Internet communications from interstate Internet communications.

4. As the Commission recognized in its Declaratory Ruling, "[a]n Internet user typically communicates with more than one destination point during a single Internet call, or 'session,' and may do so either sequentially or simultaneously." ¶ 13. Thus, the only way to separate Internet communications to intrastate websites from those to interstate websites would be to track and record each of the individual websites or other destination IP addresses accessed by end users, and to separate such usage further based on the local carrier who delivered the end user's ISP-bound communication to the particular local access number. In order to separate traffic jurisdictionally, each website IP address would then have to be traced to an individual geographic location.

5. It would be both extremely impractical technically (if not impossible) and prohibitively expensive to separate ISP communications in this manner. To begin with, it would be tremendously costly for any ISP to trap, record and store each of the numerous IP addresses that each ISP customer requests in each session. On a monthly basis, this information would occupy over 1 terabytes (*i.e.* 1 million megabytes) of storage capacity. Furthermore, not all brands of routers are capable of recording the needed information. In order to separate ISP traffic in this manner ISPs would have to restrict themselves to compliant routers, possibly requiring a massive reengineering/rearchitecture of the network and greatly increased capital expenditures. This is even more true of the new generation of gigabit routers because generally, the faster the router, the more difficult it becomes to record every packet that passes through it. The reasons for this are due to

both the super high super fast capacity of these routers and the fact that packets can only be recorded in real time. Once the packet is gone, no further records can be made . Such recording can slow and degrade the performance of routers, which is why very few core routers have such collection capabilities turned on. All of the above becomes compounded by the fact that the explosive growth of the Internet makes this issue even more difficult to manage and scale.

6. Even if it were possible to sort this information by jurisdiction – which it is not – merely storing and retrieving this information would require the expenditure of substantial resources. It goes without saying that if ISPs were required to undertake such expenses they could only be expected to seek to recover those additional expenses through the rates they charge their customers.

7. In order for this information to be useful to carriers as a basis of establishing compensation obligations, the ISP would next have to sort the information by source and destination IP address. Source addresses, however, are dynamically assigned which makes the problem even more challenging (unless the ISP has implemented a system where users from each local calling area or POP are only assigned addresses from a unique block of addresses). In the case where both source and destination IP addresses are dynamically assigned as in chat, IP telephony, and Instant Messaging, the problem becomes technically infeasible if the source address is from one ISP and the destination address is from another ISP. This would require every ISP to know the exact topology of every other ISP's network, which is information that ISPs consider confidential. Indeed, requiring that such information be shared would likely constitute a violation of network security principles.

8. Most fundamentally, even if ISPs undertook the prohibitive expenses of tracking, recording and sorting the IP addresses reached by their end users, that information would tell the ISP *nothing* about the jurisdictional nature of the traffic. That is because the only information available to the ISP about the various websites on the internet is the registered owner of the internet domain. But the principal business address of a domain owner is irrelevant. I am informed that under the Commission's Order the jurisdictional nature of traffic is determined by the geographic location of the "internet destination" – *i.e.* of the server on which the accessed website is resident – and I am aware of no source that would disclose to the ISP *that* information.

9. Indeed, the geographic location of the servers that store a particular site will often change, even moment to moment, based on each ISP's caching protocols. In order to speed the process of information retrieval, most ISPs cache popular sites that are hosted by a distant server on a server nearer to the ISPs customers. To perform this caching process efficiently, ISPs deploy dynamic software that determines which sites should be cached locally based on the popularity of the site in the area in question. The Washington Post's website, for example, may receive a lot of hits from the Washington, D.C. area, while receiving little interest in California. And the popularity of a site will change over time depending on numerous factors. Identifying the geographic locations of the servers reached by users based on the IP addresses they have requested is simply impossible.

10. For each of these reasons, it would be extremely impractical technically (if not impossible) and prohibitively expensive, to separate "interstate" and "intrastate" ISP traffic in accordance with the Commission's Order.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

John D. Friedmann

John D. Friedmann

Executed on: April 9, 1999

EXHIBIT B

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Amy D. Kanengiser
Counsel

© Bell Atlantic

April 7, 1999

Via Facsimile & Overnight Delivery

Mart Vaarsi, Esq.
AT&T
Room 2700
32 Avenue of the Americas
New York, New York 10013

Dear Mart:

Enclosed please find the Interconnection Agreement between Bell Atlantic - New Hampshire ("BA-NH") and AT&T under which AT&T adopts the Interconnection Agreement between ACC National Telecom Corp. ("ANTC") and BA-NH dated June 10, 1998 pursuant to section 252(i) of the Telecommunications Act of 1996 ("Act"). (I have not included the ANTC Agreement as part of this transmittal.) Please be advised that under the terms of the ANTC Agreement adopted by AT&T, reciprocal compensation arrangements are not applicable to traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission ("Internet Traffic"). Under the terms of the ANTC Agreement, reciprocal compensation charges are only applicable to Local Traffic. The FCC has recently determined that Internet Traffic is "non-local interstate traffic." (*In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation*, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket No. 99-68 (rel. Feb. 26, 1999) at n. 87.) The definition of Local Traffic contained in the Interconnection Agreement does not include non-local interstate traffic and thus excludes Internet Traffic.

Enclosed are two originals for AT&T's signature. Please sign both and return them to Bell Atlantic, 1320 N. Court House Road, Arlington, VA 22201, Attn.: Robin Miller, 2nd Floor. As discussed, BA-NH agrees that once the Eighth Circuit Court of Appeals has issued its mandate in respect of the U.S. Supreme Court's January 1999 decision in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *amended, on reh'g*, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct 14, 1997), rev'd *AT&T Corp. v. Iowa Utils. Bd.*, ___ U.S. ___ (1999), at AT&T's written request, BA-NH will provide a successor interconnection agreement to AT&T, to the extent required by Section 252(i) of the Telecommunications Act, to address collocation and rights-of-way. Additionally, BA-NH will review language provided by AT&T regarding the parties' respective positions on the Eighth Circuit mandate and its effect on the FCC "pick and choose" rule for inclusion in a cover letter to the PSC.

If you have any questions regarding this matter, please call me at (212) 395-6503.

Very truly yours,

cc: Brian M. Kelleher, Esq.

CERTIFICATE OF SERVICE

I, Rudolph M. Kammerer, do hereby certify that on this 12th day of April, 1999, I caused a copy of the foregoing Comments of AT&T Corp. to be served upon each of the parties listed in the attached Service List in the manner indicated.

/s/

Rudolph M. Kammerer

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